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3	11	PHYSICAL THERAPY-BOARD OF CALIFORNIA			
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8		THE ,			
i	PHYSICAL THERAPY BOARD OF CALIFORNIA				
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA				
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.11	In the Matter of the Accusation Against: Ca	se No. 1D 2008 65925			
12	Turing Germany	CCUSATION			
13	2921 Virginia Avenue Shasta Lake City, CA 96019				
14	Physical Therapist License No. PT 10192				
15	Respondent.				
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1.7	Complainant alleges:				
18	PARTIES				
19	1. Rebecca Marco (Complainant) brings this Accusation solely in her official capacity				
20	as the Executive Officer of the Physical Therapy Board of California, Department of Consumer				
21	Affairs.				
22.	2. On or about January 30, 1981, the Physical Therapy Board of California issued				
23	Physical Therapist License Number PT 10192 to Rayna Gennevieve Kline (Respondent). Said				
24	license will expire on January 31, 2012, unless renewed.				
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JURISDICTION

- 3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
 - 4. Section 2609 of the Code states:

"The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter."

5. Section 2660 of the Code states, in pertinent part:

"The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

- (g) Gross negligence in his or her practice as a physical therapist or physical therapist assistant.
- (h) Conviction of a violation of any of the provisions of this chapter or of the Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the Medical Practice Act.
- (i) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.
- (j) The aiding or abetting of any person to engage in the unlawful practice of physical therapy.
- (k) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a physical therapist or physical therapist assistant."
 - 6. Section 2661.5 of the Code states:
- "(a) In any order issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct any licensee found guilty of

unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.

- "(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in any event be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of the assessed costs specified in the proposed decision.
- "(c) When the payment directed in an order for payment of costs is not made by the licensee, the board may enforce the order of payment by bringing an action in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.
- "(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.
- "(e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license or approval of any person who has failed to pay all of the costs ordered under this section.
- "(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license or approval of any person who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one year period for those unpaid costs.
- "(f) All costs recovered under this section shall be deposited in the Physical Therapy Fund as a reimbursement in either the fiscal year in which the costs are actually recovered or the previous fiscal year, as the board may direct."
 - 7. Section 2620.7 of the Code states:
- "(a) A physical therapist shall document his or her evaluation, goals, treatment plan, and summary of treatment in the patient record.
- "(b) A physical therapist shall document the care actually provided to a patient in the patient record.
 - "(c) A physical therapist shall sign the patient record legibly.

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"(d) Patient records shall be maintained for a period of no less than seven years following the discharge of the patient, except that the records of unemancipated minors shall be maintained at least one year after the minor has reached the age of 18 years, and not in any case less than seven years."

8. Section 2655 of the Code states:

"As used in this article:

- "(a) 'Physical therapist' means a physical therapist licensed by the board.
- "(b) 'Physical therapist assistant' means a person who meets the qualifications stated in Section 2655.3 and who is approved by the board to assist in the provision of physical therapy under the supervision of a physical therapist who shall be responsible for the extent, kind, and quality of the services provided by the physical therapist assistant.
- "(c) 'Physical therapist assistant' and 'physical therapy assistant' shall be deemed identical and interchangeable."
 - 9. Section 2655.7 of the Code states:

"Notwithstanding Section 2630, a physical therapist assistant may assist in the provision of physical therapy service provided the assistance is rendered under the supervision of a physical therapist licensed by the board."

10. California Code of Regulations, title 16, section 1398.44, states:

A licensed physical therapist shall at all times be responsible for all physical therapy services provided by the physical therapist assistant. The supervising physical therapist has continuing responsibility to follow the progress of each patient, provide direct care to the patient and to assure that the physical therapist assistant does not function autonomously. Adequate supervision shall include all of the following:

(a) The supervising physical therapist shall be readily available in person or by telecommunication to the physical therapist assistant at all times while the physical therapist assistant is treating patients. The supervising physical therapist shall provide periodic on site supervision and observation of the assigned patient care rendered by the physical therapist assistant.

- (b) The supervising physical therapist shall initially evaluate each patient and document in the patient record, along with his or her signature, the evaluation and when the patient is to be reevaluated.
- (c) The supervising physical therapist shall formulate and document in each patient's record, along with his or her signature, the treatment program goals and plan based upon the evaluation and any other information available to the supervising physical therapist. This information shall be communicated verbally, or in writing by the supervising physical therapist to the physical therapist assistant prior to initiation of treatment by the physical therapist assistant. The supervising physical therapist shall determine which elements of the treatment plan may be assigned to the physical therapist assistant. Assignment of these responsibilities must be commensurate with the qualifications, including experience, education and training, of the physical therapist assistant.
- (d) The supervising physical therapist shall reevaluate the patient as previously determined, or more often if necessary, and modify the treatment, goals and plan as needed. The reevaluation shall include treatment to the patient by the supervising physical therapist. The reevaluation shall be documented and signed by the supervising physical therapist in the patient's record and shall reflect the patient's progress toward the treatment goals and when the next reevaluation shall be performed.
- (e) The physical therapist assistant shall document each treatment in the patient record, along with his or her signature. The physical therapist assistant shall document in the patient record and notify the supervising physical therapist of any change in the patient's condition not consistent with planned progress or treatment goals. The change in condition necessitates a reevaluation by a supervising physical therapist before further treatment by the physical therapist assistant.
- (f) Within seven (7) days of the care being provided by the physical therapist assistant, the supervising physical therapist shall review, cosign and date all documentation by the physical therapist assistant or conduct a weekly case conference and document it in the patient record. Cosigning by the supervising physical therapist indicates that the supervising physical therapist

has read the documentation, and unless the supervising physical therapist indicates otherwise, he or she is in agreement with the contents of the documentation.

- (g) There shall be a regularly scheduled and documented case conference between the supervising physical therapist and physical therapist assistant regarding the patient. The frequency of the conferences is to be determined by the supervising physical therapist based on the needs of the patient, the supervisory needs of the physical therapist assistant and shall be at least every thirty calendar days.
- (h) The supervising physical therapist shall establish a discharge plan. At the time of discharge, or within 7 (seven) days thereafter, a supervising physical therapist shall document in the patient's record, along with his or her signature, the patient's response to treatment in the form of a reevaluation or discharge summary.

11. Section 2630 of the Code states:

"It is unlawful for any person or persons to practice, or offer to practice, physical therapy in this state for compensation received or expected, or to hold himself or herself out as a physical therapist, unless at the time of so doing the person holds a valid, unexpired, and unrevoked license issued under this chapter.

"Nothing in this section shall restrict the activities authorized by their licenses on the part of any persons licensed under this code or any initiative act, or the activities authorized to be performed pursuant to Article 4.5 (commencing with Section 2655) or Chapter 7.7 (commencing with Section 3500).

"A physical therapist licensed pursuant to this chapter may utilize the services of one aide engaged in patient-related tasks to assist the physical therapist in his or her practice of physical therapy. "Patient-related task" means a physical therapy service rendered directly to the patient by an aide, excluding non-patient-related tasks. "Non-patient-related task" means a task related to observation of the patient, transport of the patient, physical support only during gait or transfer training, housekeeping duties, clerical duties, and similar functions. The aide shall at all times be under the orders, direction, and immediate supervision of the physical therapist. Nothing in this section shall authorize an aide to independently perform physical therapy or any physical therapy

procedure. The board shall adopt regulations that set forth the standards and requirements for the orders, direction, and immediate supervision of an aide by a physical therapist. The physical therapist shall provide continuous and immediate supervision of the aide. The physical therapist shall be in the same facility as, and in proximity to, the location where the aide is performing patient-related tasks, and shall be readily available at all times to provide advice or instruction to the aide. When patient-related tasks are provided to a patient by an aide, the supervising physical therapist shall, at some point during the treatment day, provide direct service to the patient as treatment for the patient's condition, or to further evaluate and monitor the patient's progress, and shall correspondingly document the patient's record."

- 12. Section 725 of the Code states, in pertinent part:
- "(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist, or audiologist."

FIRST CAUSE FOR DISCIPLINE

[Bus. & Prof. Code sec. 2660 (g)] (Gross Negligence in the Practice of Physical Therapy)

- 13. Respondent is subject to disciplinary action under section 2660(g) of the Code in that she committed gross negligence in her care and treatment of patient C.A. The circumstances are as follows:
- 14. At all times relevant herein, Respondent was the only licensed physical therapist employed at Mountain View Physical Therapy in Redding, California. Respondent owned approximately twenty percent of the physical therapy practice. Wesley Sphar, a licensed physical therapist assistant supervised by Respondent, owned approximately eighty percent of the Mountain View Physical Therapy practice.

Patient C.A.

- 15. On or about May 23, 2007, patient C.A., a 62-year-old woman, was referred by her physician for physical therapy to Mountain View Physical Therapy in Redding, California.

 Respondent and Physical Therapist Assistant, Wesley Sphar own and operate the business.
- 16. C.A. was referred for treatment of pain and lack of mobility caused by torn meniscus in her right knee.
- 17. C.A. was evaluated by Respondent on her first appointment, May 23, 2007. While the patient's progress note indicates an evaluation by Respondent, there is no written evaluation present in the patient's chart. Therefore, C.A.'s chart contains no specific plan of care prepared by Respondent.
- 18. Treatment documented on this first visit was therapeutic exercise, functional electrical stimulation (FES), ultrasound (US), and transcutaneous electrical nerve stimulation (TENS) with ice. The progress note for this first visit was signed by Respondent.
- 19. C.A. had a total of ten visits to Respondent's clinic for treatment between the initial visit on May 23, 2007, and the final visit on June 28, 2007.
- 20. In those ten visits, Respondent provided treatment only twice. On the other eight visits, Physical Therapist Assistant Wesley Sphar administered treatment to C.A. and completed and signed the chart entries for those visits. Respondent, as PTA Sphar's supervising physical therapist, failed to provide the necessary co-signatures in the patient's chart for any of those visits.
- 21. On three of the visits (May, 29; June 26 and 28), Respondent and PTA Sphar failed to note in the patient chart the treatments performed.
- 22. Of the seven visits in which the patient's chart contains entries of the treatments administered, functional electronic stimulation (FES) and ultrasound (US) treatments were done in all seven visits. Transcutaneous electrical nerve stimulation (TENS) treatments were done in six out of the seven visits.
- 23. On July 2, 2007, PTA Sphar notes that the patient has completed her physical therapy, but no discharge summary in the patient chart.

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Patient C.H.

- 24. On or about May 31, 2007, patient C.H., a 53-year-old woman, was referred by her physician for physical therapy to Mountain View Physical Therapy in Redding, California. Respondent and Physical Therapist Assistant, Wesley Sphar own and operate the business.
- 25. C.H. was referred for treatment of pain and in her right arm from possible carpel tunnel.
- 26. C.H. was evaluated by Respondent on her first appointment, May 31, 2007. While the patient's progress note indicates an evaluation by Respondent, there is no written evaluation present in the patient's chart. Therefore, C.H.'s chart contains no specific plan of care prepared by Respondent.
- 27. Treatment documented on this first visit was ultrasound (US), and transcutaneous electrical nerve stimulation (TENS) with ice. The progress note for this first visit was signed by Respondent.
- 28. C.H. had a total of twenty-eight visits to Respondent's clinic for treatment between the initial visit on May 31, 2007, and the final visit on August 2, 2007.
- 29. In those twenty-eight visits, Respondent provided treatment only once after the patient's first visit. On the other twenty-six visits, Physical Therapist Assistant Wesley Sphar administered treatment to C.H., and completed and signed the chart entries for those visits. Respondent, as PTA Sphar's supervising physical therapist, failed to provide the necessary cosignatures in the patient's chart for any of those visits.
- 30. On eight of the visits (June, 15, 18, 19, 21, 25, 26, 29, and August 2), Respondent and PTA Sphar failed to note in the patient exercise flow sheet that any treatment had been performed on those days.
- 31. Of the twenty-eight visits in which the patient's chart contains entries of the treatments administered, ultrasound(US) treatments were done in twenty-six visits and in twenty-one visits, transcutaneous electrical nerve stimulation (TENS) or premodulated electric stimulation with ice treatments were done.

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32. On August 6, 2007, the patient's unsigned chart entry notes "insurance isn't covering as much as she thought," and no discharge summary was completed.

Patient C.S.

- 33. On or about October 17, 2005, patient C.S., a 62-year-old woman, was referred by her physician for physical therapy to Mountain View Physical Therapy in Redding, California. Respondent and Physical Therapist Assistant, Wesley Sphar own and operate the business.
- 34. C.S. was referred for treatment of ankle pain and was seen on three days October 17, 19 and 21, 2005.
- 35. During these three visits, no exercise flow sheet was created, no supervising PT cosignature was provided for the treatments done by Wesley Sphar, PTA, and no discharge summary was completed.
- 36. On July 11, 2007, C.S. was again referred to Mountain View Physical Therapy for treatment of back pain resulting from ankle surgery. C.S. was evaluated by Respondent on her first appointment on July 11, 2007. While the patient's progress note indicates an evaluation by Respondent, there is no written evaluation present in the patient's chart. Therefore, C.A.'s chart contains no specific plan of care prepared by Respondent.
- 37. On July 13, 16, 18, 20, 23, 27, and August 6, 8, 10, 13, 15, 17, 20, 22 and 24, 2007, C.S. was treated by Respondent. Respondent notes in the patient's progress notes, "Treatment as per flow sheet," but no exercise flow sheet was created for this patient on those treatment dates.
- 38. On July 25, August 3, and August 27, 2007, PTA Wesley Sphar provided treatment for C.S., and he also noted in the patient progress note, "Treatment per flow sheet", but no exercise flow sheet was created for this patient on those treatment dates. There is also no cosignature by the supervising PT for any of these three treatment dates.

Patient J.F.

39. On or about January 5, 2007, patient J.F., a 59-year-old man, was first referred by his physician for physical therapy to Mountain View Physical Therapy in Redding, California.

Respondent and Physical Therapist Assistant, Wesley Sphar own and operate the business. J.F.

would be referred to Respondent for treatment by separate physicians on at least three different occasions between January 5, 2007, and September 6, 2007.

- 40. J.F. was referred for treatment for recovery from a pelvic fracture and rotator cuff rupture.
- 41. J.F. was evaluated by Respondent on his first appointment on January 5, 2007, for left rotator cuff rupture. While the patient's progress note indicates an evaluation by Respondent, there is no written evaluation present in the patient's chart and no exercise flow sheet. Therefore, J.F.'s chart contains no specific plan of care prepared by Respondent.
- 42. J.F. received treatments from PTA Sphar on January 8, 12, 15 16, 19, 24, 26, 29, and 31. There is no co-signature by Respondent, the supervising physical therapist, for any of these visits.
- 43. J.F. received treatments from PTA Sphar on February 2, 6, 7, and 8, 2007. There is no co-signature from Respondent, the supervising physical therapist, for any of these visits.

 There is also no discharge summary in the patient's chart.
- 44. On March 13, 2007, J.F. was again referred for left rotator cuff surgical repair, and was evaluated by Respondent. The evaluation was not included in the patient's chart and no exercise flow sheet was included.
- 45. J.F. was subsequently treated by PTA Sphar on March 15, 16, 19, 20, 27, 28, and 29. An exercise flow sheet for these visits is not included in the patient's chart. There is also no cosignature by Respondent, the supervising physical therapist, for any of these treatments provided by the PTA.
- 46. On March 22, 2007, J.F. was treated by Respondent. She wrote in the progress note, "RX as per flow sheet," but there is no exercise flow sheet included in the patient chart.
- 47. PTA Sphar provided treatments to J.F. on April 2, 3, 9, 10 12, 16, 18, 19, 23, 24, 26, 30; May 1, 3, 7, 8, 10, 14, 15, 24, 25, 29, 31; and June 1, 2007. Respondent provided treatments on May 18 and 21. The last treatment for J.T.'s referral for shoulder pain was June 1, but there was no discharge summary in the patient's chart. There is also no co-signature by Respondent, the supervising physical therapist, for any of these treatments by the PTA.

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48.	There were a total	of 52 treatmen	nt visits by J.T	`. for the referral	for shoulder pain

- 49. On June 7, 2007, J.T. was again referred for physical therapy, this time for recovery from left knee surgery and removal of hardware from right knee. Respondent performed initial evaluation.
- 50. J.T. was subsequently treated by PTA Sphar on June 8, 11, 13, 15, 18, 20,22; July 3, 5, 6, 9, 11, 16, 18, 20, 23, 25, 30; August 1, 6, 10, 14, 15, 17, 20, 23, 24, 27, 30, 31 and September 6, 2007. There is no co-signature by Respondent, the supervising physical therapist, for any of these treatments by the PTA. There is also no discharge summary provided in the patient's chart.
- 51. There were a total of 33 visits for J.T's referral for treatment of the recovery from knee surgery. In every one of those visits, J.T. was treated with functional electronic stimulation (FES), and transcutaneous electrical nerve stimulation (TENS) with ice.
- 52. Respondent's conduct as set forth above provides grounds for discipline against her physical therapist license as it constitutes gross negligence in violation of section 2260 (g) of the Code as follows:
- a) Respondent failed to properly document patient evaluations, progress assessments, and reevaluations. Respondent failed to properly document treatment plans, goals, and discharge summaries in the patient record.
- b) Respondent failed to properly document treatments performed, and also documented treatments that were not performed.
- c) Respondent failed to conduct weekly case conferences with her physical therapist assistant and failed to co-sign and date the treatment notes by the physical therapist assistant.
 - d) Respondent failed to properly supervise her physical therapist assistant.
- e) Respondent excessively prescribed, furnished and administered physical therapy treatments to her patients as described above.

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SECOND CAUSE FOR DISCIPLINE

[Bus. & Prof. Code sec. 2660 (i)]

(Aiding and Abetting the Violation of Laws and Regulations Governing the Practice of Physical Therapy)

- 53. Respondent is subject to disciplinary action under section 2660 (i) of the Code in that she aided and abetted her physical therapy assistant's violation of the law. The circumstances are as follows:
 - 54. Paragraphs 13 through 52, detailed above are repeated here as if fully set forth.
- 55. Respondent's conduct as set forth above provides grounds for discipline against her physical therapist license as it constitutes the aiding and abetting of another to violate the laws and regulations governing the practice of physical therapy in violation of section 2260 (i) of the Code as follows:
- a) The physical therapist assistant's care and treatment of the patients cited above was grossly negligent in violation of section 2660 (g) of the Code.
- b) The physical therapist assistant violated California Code of Regulations, title 16, section 1398.44 by failing to have the supervising therapist co-sign treatment notes; failing to properly document all treatments in patient records; failing to hold periodic case conferences for each patient; failure to establish discharge summary and plan for each patient.
- c) The physical therapist assistant's care and treatment of the patient's cited above constituted excessive prescribing, and administering of treatments in violation of section 725 of the Code.

THIRD CAUSE FOR DISCIPLINE

[Bus. & Prof. Code sec. 2655; Cal. Code of Reg., tit. 16, sec.1398.44] (Inadequate Supervision of a Physical Therapist Assistant)

- 56. Respondent is subject to disciplinary action under section 2655 of the Code and section 1398.44 of the Code of Regulations in that she failed to properly supervise her physical therapist assistant. The circumstances are as follows:
 - 57. Paragraphs 13 through 52 above are repeated here as if fully set forth.

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- 58. Respondent's conduct as set forth above provides grounds for discipline against her physical therapist license as it constitutes failure to properly supervise her physical therapist assistant in the care and treatment of the patients described above in violation of law as follows:
- a) Respondent's physical therapist assistant, Wesley Sphar, owns eighty percent of the therapy clinic in which Respondent works; accordingly, Respondent is the employee of her assistant. By reason of her status as an employee of the assistant she supervises, Respondent is improperly deterred or inhibited in the exercise of her responsibility to adequately direct and supervise her physical therapist assistant in the care and treatment of patients.
- b) Respondent must assure that her physical therapist assistant does not function autonomously. Her assistant's ownership of Mountain View Therapy Clinic in which Respondent practices, together with the facts of the physical therapist assistant's care and treatment of the patients as described above, demonstrates the physical therapist assistant's autonomy and Respondent's inadequate supervision.

FOURTH CAUSE FOR DISCIPLINE

[Bus. & Prof. Code sec. 2620.7] (Failure to Properly Document Treatment)

- 59. Respondent is subject to disciplinary action under section 2620.7 of the Code in that she failed to properly document the care and treatment of her patients. The circumstances are as follows:
 - 60. Paragraphs 13 through 52 above are repeated here as if fully set forth.
- 61. Respondent's conduct as set forth above provides grounds for discipline against her physical therapist license as it constitutes failure to properly document the care and treatment of the patients described above in violation of section 2620.7 of the Code as follows:
- a) Respondent failed to properly document evaluations, treatment plans, progress notes, and discharge summaries for the patients described above.
- b) Respondent failed to co-sign the treatments administered by the physical therapist assistant she supervised for the four patients described above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

- 1. Revoking or suspending Physical Therapist License Number PT 10192, issued to Rayna Gennevieve Kline;
- 2. Ordering Rayna Gennevieve Kline to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5;
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: 11/07/2011 Resecce

'REBECCA MARCO

Executive Officer Physical Therapy Board of California

Department of Consumer Affairs

State of California

Complainant

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